

SUBJECT: Changing requirements for authorizing property re-entry and retrieval

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 6 ayes — Oliveira, Shine, Romero, Stickland, Villalba, Workman

0 nays

1 absent — Collier

SENATE VOTE: On final passage, April 3 — 31-0

WITNESSES: *On House companion bill, HB 2727:*

For — Bobby Gutierrez, Justice of the Peace and Constables Association of Texas; Brittany Hightower, Texas Advocacy Project; (*Registered, but did not testify*: Arianna Smith, Combined Law Enforcement Associations of Texas (CLEAT); Jama Pantel, Justice of the Peace and Constables Association of Texas; Joseph Green, Travis County Commissioners Court; Kirsha Haverlah)

Against — None

BACKGROUND: Property Code, sec. 24A.002 allows a person who is unable to enter the person's residence or former residence to retrieve personal property because the current occupant is denying the person entry to apply to the justice court for an order authorizing the person to enter the residence accompanied by a peace officer to retrieve specific personal property, including only:

- medicine, medical records, or medical supplies;
- clothing;
- child-care items;
- legal or financial documents;
- checks or bank or credit cards in the applicant's name;
- employment records; or

- personal identification documents.

Sec. 24A.002(c) requires an applicant for entry to execute a bond payable to the current occupant of the residence that is conditioned on the applicant paying all damages for wrongful property retrieval.

Sec. 24A.002(e) authorizes a justice of the peace to issue an order granting the applicant authority to enter the property if the justice finds that:

- the applicant is unable to enter the residence to retrieve personal property because the current occupant has denied them access;
- the applicant is not subject to a protective order or otherwise prohibited by law from entering the residence;
- there is a risk of personal harm to the applicant or the applicant's dependent if the property is not retrieved quickly;
- the applicant is currently or was formerly authorized to occupy the residence according to documentary evidence; and
- the current occupant received notice of the application and was provided an opportunity to contest the application in court.

DIGEST: CSSB 920 would change the requirements for authorizing access to a residence or former residence.

The bill would allow a justice to issue a writ authorizing entry if the justice found that the current occupant posed a clear and present danger of family violence to the applicant or the applicant's dependent. This finding would satisfy the requirement under current law that an applicant must have been denied access by the current occupant. The bill also would allow a justice to waive the bond requirement for an application concerning family violence.

The bill would allow a justice to issue a writ authorizing entry without providing the required notice and hearing to the occupant if the justice found at a hearing that:

- the current occupant posed a clear and present danger of family violence to the applicant or applicant's dependent;
- the personal harm to the applicant or applicant's dependent would be immediate and irreparable if the application was not granted; and
- all other requirements of the applicant had been satisfied.

If the justice of the peace had issued a writ authorizing entry without providing notice or hearing to the occupant, the bill would allow the justice to recess the required family violence hearing to notify the current occupant by telephone that the occupant could attend the hearing or bring the personal property in question to the court. The justice would have to reconvene the hearing before 5 p.m. on the same day.

The bill also would add to the list of personal property which could be retrieved under a writ authorizing entry to include copies of electronic records containing legal or financial documents.

The bill would change the document that judges must issue to authorize entry from a court order to a temporary ex parte writ, which could not be valid for a period of more than five days.

The bill would take effect September 1, 2017, and would apply only to an application filed on or after that date.

**SUPPORTERS
SAY:**

CSSB 920 would protect victims of family violence by ensuring safe access with a police escort to retrieve vital medical and personal property in situations in which entering a residence would otherwise pose a clear and present danger. This ability would be afforded only in cases in which re-entry was necessary to prevent immediate and irreparable personal harm.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

CSSB 920 differs from the Senate-passed bill by requiring a justice to find

that the personal harm to the applicant or dependent would be immediate and irreparable in order to issue a writ of re-entry without providing notice or hearing to the current occupant.

A companion bill, HB 2727 by Lucio, was reported favorably by the Business and Industry Committee on April 25.